IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.926 OF 2006
IN
ARBITRATION PETITION NO.245 OF 2005

M/s.Shah Manikchand Gangaram. ...Appellant.
Vs.
Indian Oil Corporation Ltd. ...Respondent.

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Dr. M. Shah Alam Khan with Smt. Seema Singh for the appellant.
Shri Janak Dwarkadas with Shri Umang H.Modi i/b. RMG Law Associates for the respondent.

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CORAM : R. M. S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ.

January 15, 2007.

P.C. :

Heard. The appellant challenges an order sated 1st December 2005 passed by the Learned Single Judge in Arbitration Petition No.245 of 2005. By the impugned order, the Arbitration Petition has been allowed and the award passed by the learned Arbitrator has been set aside.

2. Placing reliance in the decision of the Apex Court in

Union of India and another vs.Kalinga Construction Co. (P) Ltd., (AIR 1971 SC 1646), the learned Advocate for the appellant stated that the Marketing Discipline Guidelines clearly required the Respondent to give fair opportunity of remedying the breach at least once or twice before taking drastic action of terminating the agency. The matter relates to the agency relating to the business pertaining to Petrol Pump. The Respondent has sought to take action of terminating the contract of agency on account of serious lapses on the part of the appellant which included construction of additional tanks, dealing in adulterated petrol products etc. It is also sought to be contended on behalf of the appellant that the findings which were arrived at by the Arbitrator could not have been interfered with by the Learned Single Judge in Arbitration Petition by reassessing the materials on record. On the other hand, the learned Advocate for the respondent submitted that the very guidelines on which reliance was sought to be placed on behalf of the appellant, clearly empower the Competent Authority of the concerned Oil Company to take appropriate higher punitive action against the erring dealer including termination of contract at the first or any instance of breach of contract.

3. The plain reading of the impugned order discloses that the Learned Single Judge taking into consideration the nature of the contract and breach of conditions of the contract on the part of the appellant has held that no fault could have been found with the action taken by the Competent Authority in terminating the contract of the dealership to the appellant. He has also further held following the decision of the Supreme Court in **E. Venkatakrishna vs. Indian Oil Corporation**, Judgment Today 2000(10) SCC 558 that the Learned Arbitrator could merely award damages, but could not have ordered restoration of the dealership.

4. Plain reading of the impugned judgment reveals that the findings arrived at by the Learned Arbitrator in respect of breach of agreement committed by the appellant have not been interfered with by the Learned Single Judge. The fresh analysis of certain materials on the record has been done merely to ascertain that the findings arrived at by the learned Arbitrator in that regard are clearly borne out of the record or not. The Learned Single Judge interfered with the part of the award which has been clearly delivered in excess of the jurisdiction of the Arbitrator as well as contrary to the terms of the agreement. The dealership agreement,

particularly clauses 5, 6, 15 and 17 which have been reproduced in the impugned judgment, clearly disclose that the action taken by the respondent was clearly warranted in the facts and circumstances of the case which revealed that there was a clear admission on the part of the appellant regarding the breach of the terms of the dealership agreement. By the letter dated 12th October 2003 it was clearly brought to the notice of the appellant the details of the irregularities found during the visit of the officers of the Anti Adulterated Cell. In the reply dated 20th October 2003, the appellant while admitting all those major irregularities and breaches had given lame excuses in relation to such irregularities and breaches without giving any satisfactory explanation for the same. The major irregularities and breaches included construction of two tanks without permission of the respondent and one of the tanks of the size of 10'x6'x4' was found to have contained about 2 kl of suspected MS having density 0.7385 gm/ml. The other major irregularities which were found were narrated as under :

"Sr. No. Details [Major irregularities]

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1. Quantity short in 5 litre measure

[W & M seals tampered]

MS I - 30 ml short
MS II - 40 ml short
HSD I - 50 ml short
HSD II – 25 ml short

2. Density variation as compared to reference density

MS I - 0
HSD I - 0
HSD II - 0.0218

3. Additional tank size 10' x 6' x4' in the premises with 2 kl of suspected MS having density 0.7385 gm/ml

4. Quantity variation
1. Positive stock variation of 16676 litres of HSD in tank II."

The reply thereto by the appellant was to the effect as under:

"Our reply to your letter point wise is as follows

Point No.1 Short delivery in 5 litre measure (avg 25 ml) Though the DU s are very old, the shortages are actually within limits. The recorded shortages are not very true and were observed after 15 litres of non stop delivery.

Point No.2 & 4 Density and quantity variation we were planning to place a order for 12 kl HSD on IOC on 10.10.03. However it could not be placed for financial reasons.

The other shift incharge in the morning was unaware and one of the vehicles which had come for refueling [Driver absent/documents unavailable] was decanted in the

morning as he was presuming that the vehicle was of HSD of order on 10.10.03.

Point No.3 (additional tank)
The tank is an old tank and was never in use."

Bare reading of the above reply by the appellant would disclose that there was clear admission on the part of the appellant regarding the major irregularities and breaches without giving satisfactory explanation in that regard. In the background of these circumstances, the finding arrived at by the Learned Arbitrator was duly confirmed by the Learned Single Judge under the impugned order and in our considered opinion, we do not find any reason to interfere therein as no case has been made out for the same.

5. As rightly submitted by the learned Advocate for the respondent, the guidelines clearly provide that the Competent Authority of the concerned Oil Company can take appropriate higher punitive action against the erring dealer including termination of the contract even at the first instance of the commission of the major irregularities. In the case in hand, as has been already observed, the major irregularities included construction of unauthorised tanks which were found filled in with

adulterated petrol and there was also stock variation in the register and actual petrol quota supplied to the appellant and there was no satisfactory explanation forthcoming from the appellant. In these circumstances, no fault can be found with the action taken by the respondent and duly confirmed by the Learned Single Judge regarding termination of the dealership. The Learned Single Judge was also justified in holding that the learned Arbitrator erred in holding that the error being for the first time, the punishment of imposing fine would have been in accordance with the dealership agreement. Indeed, the said finding of the learned Arbitrator was totally contrary to the terms of the agreement. The contents of the agreement undoubtedly disclose various punitive actions have been provided in case of breach of the agreement and the same does provide that one of the two lapses can be condoned. However, it is nowhere provided that one of two lapses have necessarily to be at different point of time and/or more than one irregularity committed at one and the same time to be considered as only one act of major irregularity for the purposes of condoning the lapse on the part of the appellant. It would all depend on the facts and circumstances of the case and the nature of the irregularity or breach committed by the dealer. Considering the

irregularities and breach committed in the case in hand, it can hardly be said that the same warranted condonation by merely ordering of the payment of fine or that the fine would be sufficient to meet the ends of justice. The very nature of the irregularities committed by the appellant, particularly in relation to the construction of the unauthorised tanks and storage of adulterated petrol as also discrepancy in the register and actual petrol quota available with the appellant, warrant no interference with the action of termination of agreement taken by the respondent.

6. In this view of the matter, therefore, we do not find any case having been made out for interference in the impugned order. The appeal is therefore, liable to be dismissed with costs.

7. The appeal is accordingly dismissed. The costs is quantified at Rs.10,000/-.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)